



Commonwealth
of Massachusetts

OCPF Online
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Office of Campaign and Political Finance
One Ashburton Place, Room 411
Boston, MA 02108

Advisory Opinion

March 11, 1998
AO-98-05

Ms. Barbara Davis
49 Summit Road
Holbrook, MA 02343

Re: Political activity of Holbrook adult education program instructors

Dear Ms. Davis:

This letter is in response to your February 11, 1998 request for an advisory opinion regarding whether your husband, who will be teaching a class for the Town of Holbrook's adult education program, may be treasurer of your political committee.

Question

Is a person who teaches a class for the program a "person employed for compensation" by the Town, within the context of the campaign finance law and therefore prohibited from serving as a treasurer of a political committee?

Answer

No. Such persons should be considered "independent contractors." Therefore, your husband may serve as treasurer of the committee.

Discussion

Section 13 of M.G.L. c. 55, the campaign finance law, states that "No person employed for compensation, other than an elected officer, by the commonwealth or any city or town shall directly or indirectly solicit or receive any gift, payment, contribution, assessment, subscription or promise of money or other thing of value for the political campaign purpose of any candidate for public office or of any political committee or for any political purpose whatever . . ."

Section 13 does not apply to independent contractors. See AO-88-19. For the reasons set forth below, it is our opinion that your husband, in his capacity as teacher in the Town of Holbrook's adult education program, would be an "independent contractor."

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An independent contractor is a person who "contracts with another to do something for him but who is not controlled by the other nor subject to the other's right to control with respect to his physical conduct in the performance of the undertaking . . ." The office considers a number of factors in determining whether a person is an independent contractor. Compare AO-95-26 (sole proprietor computer consultant who has a contract with a state agency as one of many clients, has no office at the agency, sets his own hours, is not supervised or controlled by the agency, and provides guidance or advice on an as-needed basis, is an "independent contractor" not subject to section 13) and AO-93-24 (volunteer fire fighter is not an independent contractor even though he sets his own hours because he is subject to supervision and control).

Your husband is paid from a revolving account set up by Town Meeting to accept tuition payments and make payments to teachers. His salary for a six week course will be approximately \$200. The funds will not be derived from the school budget, but from the revolving account. Other than the \$200, he will receive no benefits from the Town.

Whether a person is considered an "independent contractor" for purposes of the campaign finance law, depends, however, on the nature of the relationship between the person and the governmental authority for which he or she provides services.

The adult education program is run on an informal basis: The Town does not schedule classes or evaluate teachers' performance. The director of the program initially obtains input from residents to assess interest in potential courses. The director then contacts prospective teachers to see if they are interested in giving a particular course. If asked by the director to teach a class, it is up to your husband to decide if he is interested in teaching. There is no contract requiring him to teach a course even if there is interest. After being told by the director that there is interest in a possible course, a prospective teacher may contact those who have expressed an interest. A class might be scheduled based on the preferences of potential students, e.g., if persons interested in a class want to meet in the afternoon, rather than the evening, a teacher might schedule classes for the afternoon.

In short, your husband should be considered an independent contractor because he sets his own hours, does not receive work-related benefits other than his \$200 salary from the Town, is not supervised or controlled by the Town, is not subject to a traditional employer-employee relationship, and provides services at his own discretion.

This opinion is issued within the context of the Massachusetts campaign finance law and is provided on the basis of representations in your letter. I have enclosed *a Guide to Political Activity for State, County and Municipal Employees*, for reference. Please contact us if you have further questions.

Sincerely,

A handwritten signature in black ink, reading "Michael J. Sullivan". The signature is fluid and cursive, with a long horizontal line extending from the end.

Michael J. Sullivan
Director